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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT TACOMA

8 KIMBERLY BROOKE GRAY,

9 Petitioner,

10 v.

11 UNITED STATES OF AMERICA,

12 Respondent.

CASE NO. C18-5464 BHS

ORDER EXTENDING DEADLINE
TO RESPOND TO PETITIONER'S
28 U.S.C. § 2255 MOTION AND
RENOTING MOTION ON
ATTORNEY-CLIENT PRIVILEGE

13 This matter comes before the Court on Respondent the United States of America's
14 emergency motion regarding waiver of attorney-client privilege and request for an
15 extension of time to respond to Petitioner's 28 U.S.C. § 2255 motion. Dkt. 5. The Court
16 has considered the pleadings filed in support of the motion and the remainder of the file
17 and hereby (1) grants the request for an extension of the government's deadline to
18 respond and (2) renotes the government's motion regarding the waiver of attorney-client
19 privilege.

20 It is well-established that a "defendant impliedly waives his attorney-client
21 privilege the moment he files a habeas petition alleging ineffective assistance of
22 counsel." *Lambright v. Ryan*, 698 F.3d 808, 818 (9th Cir. 2012). Nonetheless, "such

1 waiver is narrow and does not extend beyond the adjudication of the ineffectiveness
2 claim in the federal habeas proceeding.” *Id.*, 698 F.3d at 818. Accordingly, while the
3 government is likely to succeed in its motion regarding the waiver of attorney-client
4 privilege, it would be improper for the Court to consider such a motion on an emergency
5 basis without affording Petitioner the opportunity to respond to the scope of the
6 government’s requested discovery. The motion will be renoted and Petitioner will be
7 given an opportunity to respond.

8 It is apparent from the Government’s motion that an extension of the deadline for
9 its response to Petitioner’s § 2255 motion is necessary. Petitioner’s former counsel, upon
10 whose representation Petitioner’s § 2255 motion is predicated, has declined to speak with
11 the government absent the entry of an order from the court regarding the waiver of
12 attorney-client privilege and directing him to do so. As the deadline for a response has
13 nearly arrived, the deadline must be extended if the government is to be afforded an
14 adequate opportunity to respond with supporting discovery.

15 Therefore, the government’s request for relief from a deadline is **GRANTED**. The
16 government shall file its response to Petitioner’s 28 U.S.C. § 2255 motion no later than
17 August 31, 2018. Any reply by Petitioner shall be filed and served on or before
18 September 14, 2018. The Clerk shall **RENOTE** Petitioner’s 28 U.S.C. § 2255 motion
19 (Dkt. 1) for consideration on September 14, 2018.

20 The Court **RESERVES RULING** on the government’s motion regarding the
21 waiver of attorney-client privilege. Plaintiff may file a response to the motion no later
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1 than July 25, 2018. The Clerk shall **RENOTE** the motion (Dkt. 5) for consideration on
2 July 27, 2018.

3 **IT IS SO ORDERED.**

4 Dated this 12th day of July, 2018.

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7 BENJAMIN H. SETTLE
United States District Judge

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